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1
2 UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COPY

4 -----x
5 CONSTELLATION NEWENERGY, INC.,

6 Plaintiff,

7 Civil Action No.

8 -against- 02-CV-2733

9 POWERWEB TECHNOLOGIES, INC., et al,

10 Defendants.
11 -----x

12 February 17, 2004

13 10:05 a.m.

14 Deposition of BRIAN HAYDUK, taken by
15 Defendants, pursuant to notice, at the offices of
16 Wolf, Block, Schorr & Solis-Cohen, LLP, 250 Park
17 Avenue, New York, New York, before SUZANNE
18 PASTOR, a Shorthand Reporter and Notary Public
19 within and for the State of New York.

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Exhibit E

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BRIAN HAYDUK

11:40:40 2 Q. Was it your understanding that if
11:40:44 3 there was anything left over, it would be used
11:40:46 4 for other opportunities?

11:40:48 5 A. Yes. It was my understanding that
11:40:52 6 during the term of the agreement, that's what
11:40:54 7 would happen. It would be used for other
11:40:54 8 opportunities.

11:41:04 9 Q. Well, does it say in here anywhere
11:41:06 10 that it would be returned if it wasn't used for
11:41:08 11 Bell?

11:41:10 12 A. No. But certainly my assumption was
11:41:14 13 that if the entire contract was terminated and
11:41:16 14 the funds weren't used for Bell Atlantic or other
11:41:20 15 opportunities, then it would be refunded.

11:41:22 16 Q. And that was your assumption based on
11:41:22 17 what?

11:41:28 18 A. Based on a contract being terminated,
11:41:30 19 that that's what would happen.

11:41:32 20 Q. Powerweb never agreed to that, did
11:41:34 21 they?

11:41:34 22 A. Not in -- no.

11:41:48 23 Q. At the time this was entered into,
11:41:50 24 were you aware of any discussions within
11:41:54 25 NewEnergy about pursuing this same type of

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BRIAN HAYDUK

13:09:20 2 likely person to present this to Bell?

13:09:24 3 A. At the time probably either Jim

13:09:30 4 Kernan or David McGeown. I may have been

13:09:34 5 involved in presenting it, too, but I just don't

13:09:36 6 remember doing that.

13:09:38 7 Q. Do you remember having any meetings

13:09:40 8 with Bell about the proposal?

13:09:42 9 A. Not specifically, no.

13:09:58 10 Q. What happened with the deal that was

13:10:00 11 being proposed?

13:10:06 12 A. My understanding was sometime before

13:10:10 13 spring -- we had a deadline that we had to meet

13:10:14 14 in order to get the contracts done and all the

13:10:18 15 work that Powerweb had to do. We had a deadline

13:10:22 16 that we had to meet. And sometime right before

13:10:28 17 or right after, my recollection is I had a

13:10:32 18 conversation with Jeremy Metz where he

13:10:36 19 essentially told me that they, I don't know

13:10:38 20 exactly who "they" are in this case, but they

13:10:42 21 couldn't get comfortable with running the engines

13:10:50 22 as part of the program because of the permitting

13:10:50 23 on the engines.

13:10:52 24 I don't know if it was their legal

13:10:54 25 folks or their environmental folks or who, but

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BRIAN HAYDUK

13:10:58 2 for whatever reason, they could not get past the
13:11:00 3 permitting issue and decided that they couldn't
13:11:04 4 run the engines. And if they couldn't run the
13:11:08 5 engines, this deal essentially dies on the vine,
13:11:08 6 which is what happened.

13:11:12 7 Q. And this was before the summer of
13:11:12 8 2000?

13:11:12 9 A. Correct.

13:11:16 10 Q. Was there a decision made at that
13:11:20 11 time to in effect postpone it until the summer of
13:11:20 12 2001?

13:11:26 13 A. What's "it" in that case?

13:11:28 14 Q. Proceeding with this proposal.

13:11:30 15 A. I don't know.

13:11:44 16 Q. What, if anything, was done with Bell
13:11:48 17 in the summer of 2001 in this regard?

13:11:48 18 A. I don't think anything.

13:11:54 19 Q. Was something done in New York?

13:11:56 20 A. I don't believe so.

13:12:08 21 Q. Even in 2001?

13:12:12 22 A. In 2001 we -- at some point we were
13:12:16 23 involved with Electrotech that had a relationship
13:12:22 24 with Bell Atlantic, or maybe it was Verizon at
13:12:26 25 that point. I don't know if that was '01 or